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**OFFICE OF PETITIONS**

|                                  |   |                      |
|----------------------------------|---|----------------------|
| In re Application of             | : |                      |
| Cole et al.                      | : | DECISION ON PETITION |
| Application No. 10/668,297       | : | TO MAKE SPECIAL      |
| Filed: September 24, 2003        | : | 37 CFR 1.102(D)      |
| Attorney Docket No. 53394.000720 | : |                      |

This is a decision on the petition under 37 CFR §1.102(d), filed June 22, 2004, to make the above-identified application special based on actual infringement as set forth in M.P.E.P. § 708.02, Section II.

The petition is **DISMISSED**.

A grantable petition to make an application special under 37 CFR §1.102(d) and MPEP §708.02, Section II: Infringement, must be accompanied by the required fee pursuant to 37 CFR 1.17(h) and a statement by the applicant, assignee, or attorney/agent registered to practice before the office alleging:

(A) That there is an infringing device or product actually on the market or method in use;

(B) That a rigid comparison of the alleged infringing device, product, or method with the claims of the application has been made, and that, in his or her opinion, some of the claims are unquestionably infringed; and

(C) That he or she has made or caused to be made a careful and thorough search of the prior art or has a good knowledge of the pertinent prior art.

Applicant must provide one copy of each of the references deemed most closely related to the subject matter encompassed by the claims if said references are not already of record.

The instant petition fails to meet the requirements set forth above for special status because it lacks item (A). Though petition alluded to an infringing device or product actually being on the market, the specific statement as listed above was not incorporated into the petition.

Further correspondence with respect to this matter should be addressed as follows:

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By FAX:                  (571) 273-8300

Telephone inquiries concerning this decision should be directed to Petitions Examiner Liana Chase at 571-272-3206.

All other inquiries concerning either the examination or status of the application should be directed to the Technology Center.

The application is being forwarded to the Technology Center Art Unit 3761 for action in its regular turn.

  
David Bucci  
Petitions Examiner  
Office of Petitions